

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 849, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, (UAW), AFL-CIO

Case No. 7-CB-12623

and

VISTEON CORPORATION

Case No. 7-CA-43795

and

ALI CANADA, An Individual

Patricia Fedewa, Esq., for the General Counsel.
Raymond J. Carey, Esq., (*Foley and Lardner*),
of Detroit, Michigan, for the Respondent Visteon Corporation.
Eric I. Frankie, Esq., (*Miller Cohen, P.L.C.*),
of Detroit, Michigan, for Respondent Local 849.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan on June 4-6, 2001. The charge against the Respondent Union was filed November 2, 2000, and amended on January 11, 2001; the complaint was issued February 28, 2001 and amended on April 17, 2001. The charge filed against Visteon was settled by the General Counsel and Visteon at the outset of the hearing on June 4, 2001.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and UAW Local 849, I make the following

¹ I hereby correct the transcript in the following respects:

Tr. 121, line 14: "Mr. Frankie" should read "Judge Amchan;"

Tr. 250, line 3: After "Who is Mr. Dobbins?" the transcript should reflect that Ali Canada answered this question;

Tr. 264, line 10: the word "allegation" should be "litigation".

Findings of Fact

I. Jurisdiction

5 Visteon, a corporation, manufactures and sells automotive parts at its facility in Ypsilanti, Michigan, where it annually receives gross revenues in excess of \$500,000 and purchases goods valued in excess of \$50,000 from points outside of the State of Michigan. I find that Visteon Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, UAW Local 849, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

15 The Union is the exclusive collective bargaining representative of a unit of employees at Visteon's Ypsilanti, Michigan plant, which includes the Charging Party, Ali Canada. The General Counsel alleges that the Union violated Section 8(b)(1)(A) of the Act in September or October 2000, by requesting that Visteon prevent Canada from posting and/or distributing flyers containing dissident union messages. The General Counsel also alleges that the Union violated Sections 8(b)(1)(A) and 8(b)(2) of the Act by requesting that Visteon discipline Ali Canada between December 21, 2000 and January 4, 2001, because of Canada's dissident, protected concerted activities.²

25 Visteon Corporation was spun off by Ford Motor Company in 2000. Ali Canada, the Charging Party, was hired by Ford to work at the Ypsilanti plant in 1974. In recent years he has been active in the "new directions" movement, a dissident faction within the UAW. He recently was elected a district committeeman in the Union.

30 In late 1997, Canada was placed on medical leave for about 3 months as the result of an altercation he was allegedly involved in at work and statements he made at a grievance meeting, which were perceived as threats. In June 1999, in a conversation with Andrew Dobbins, financial secretary/treasurer of the Union, Canada said something to the effect that if Union President Jerry Lawson and Union Plant Chairman John Fosket kept "messing with him," that he would put a bullet in both their heads.

35 *Complaint paragraphs 11, 12 and 18 (the Union's response to Ali Canada's flyer concerning cell phones)*

In late September 2000, Canada distributed a flyer at work, which stated:

40 To Local 849 Members. Plant Chairman makes over \$100,000 per year and the President of the Local makes over \$85,000 per year. Do you want to pay their Cell Phone Bill?

From
Ali Canada

45 On Saturday, September 30, 2000, Union Plant Chairman John Fosket brought a copy of this flyer to Thomas Jones, a Visteon labor relations supervisor. Fosket told Jones that he considered the dissemination of the flyer to be harassment, particularly insofar as it referred to

² I conclude after reading the General Counsel's brief that he has abandoned the allegation in complaint paragraph 17 that Respondent breached its duty to fairly represent Ali Canada.

his salary, and that he wanted Visteon to stop the dissemination of the flyer. Jones and Roy Smith, one his subordinates, met with Ali Canada and told him to stop disseminating the flyer and warned him that if he continued to distribute the flyer that Visteon would discipline him.

5 The General Counsel alleges in complaint paragraphs 11, 12 and 18 that the Union violated Section 8(b)(1)(A) in asking Visteon to stop dissemination of this flyer. I conclude that this violation has been established. In disseminating his flyer, Ali Canada was engaged in conduct that was protected because it had the object of initiating or inducing group action to prevent the Union from paying for the cell phones of its officials, *Astro Tool & Die Corp.*, 320
10 NLRB 1157, 1163 (1996). Although the Union claims that the flyer was inaccurate with regard to the salaries of its officials, there is no evidence which would lead to the conclusion that the flyer was unprotected on the grounds that it was sufficiently offensive, defamatory or
opprobrious to remove it from the protection of the Act, *KBO, Inc.*, 315 NLRB 570 (1994).³

15 *Complaint paragraphs 13, 14, 17-19 (the Union's filing of grievances on behalf of unit member Pauline Castro alleging harassment by Ali Canada).*

20 Pauline Castro, a bargaining unit member, suffered a partial amputation of her left middle finger when she caught it in a conveyor at work on April 21, 2000. She returned to work on July 17, 2000, and was assigned to restricted duty in Visteon's copy room. About two months later, she was temporarily assigned to work in the labor relations department. In November 2000, she was assigned to the company's training room. Both the Union and Visteon management participated in this assignment. Ali Canada believed that these
25 assignments were the result of favoritism on the part of union officials towards employees who supported them. Castro serves on a plant ergonomics committee and a joint labor-management attendance committee. Union Plant Chairman John Fosket solicited Castro to serve on the attendance committee.

30 Castro had relatively little and seemingly innocuous contact with Canada prior to October 2000. On October 18, 2000, she was standing in a hallway talking to another employee, when Ali Canada walked past her. He said something to the effect that her finger should be healed by now. Castro took offense to this remark and responded, "since when did you become a doctor?" Canada did not stop and nothing more was said by either employee.⁴

35 The next day, Pauline Castro went to the labor relations office and filed a complaint alleging that Canada was harassing her. She also went to Union Committeeman Jim Campbell and asked him to file a grievance on her behalf. Campbell did so, asking Visteon to see to it that its zero tolerance policy with regard to harassment was enforced so as to stop harassment
40 of Pauline Castro by Ali Canada, or any other employee.

45 ³ The Union has not established that Canada divulged any information that was confidential. Neither did the Union establish that Canada's statements in the flyer regarding Lawson and Fosket's salaries are false, let alone that they were made with knowledge of their falsity, or with reckless disregard of whether they were true or false. Thus, these statements retain their protected status, *KBO, supra*.

⁴ The testimony of Castro and Ali Canada regarding their encounters on October 19 and December 20, 2000, differ only in a few relatively insignificant details. To the extent they differ, I find Castro's account to be more credible—largely due to the lack of credibility of Canada's denial that he made threats regarding Fosket and Lawson in June 1999. Andrew Dobbins' testimony on this point strikes me as extremely credible.

Visteon Labor Relations Manager Roy Smith discussed Castro's complaint with Canada and told him to stay away from her. Between October and December 21, Canada's only contact with Castro was at a political fundraiser several weeks later and at a union meeting. At the fundraiser, Canada approached Castro and said he would like to discuss the October 19th incident. Castro told him she didn't want to discuss it. Canada asked her why she filed a grievance against him; Castro said she hadn't filed a grievance against him. At the union meeting, Canada initially said something to Castro that she didn't hear, but then told her that he wouldn't talk to her because she would report him to the labor relations department.

On the morning of December 20, 2000, Pauline Castro was in the training room showing a video to approximately 18 newly hired employees. At some point, Castro walked from the front of the room towards a desk in the back of the training room. She saw Ali Canada sitting in the audience in front of the desk. Canada said nothing to Castro. After sitting at the desk for a short time, Castro left the room to find a management representative. She asked whether there was any reason for Canada to be in the training room. She was told there was no reason for Canada to be there. Castro returned to the training room; Canada eventually left the room without ever saying anything to Castro.

A few hours later, Castro visited Union Committeeman Jim Campbell and asked him to accompany her to the labor relations department. Castro gave a statement to a labor relations representative and Campbell filed a grievance. The grievance alleged that management had done nothing to enforce the zero tolerance policy and "because of her actions [referring to Castro's previous grievance] and labor relations inaction Ali Canada is now reverting to stalking the aggrieved which is a dischargable offense." The adjustment requested by the Union was "that labor relations enforce the zero tolerance letter and put a stop to these and any other actions by Ali Canada toward the aggrieved, immediately..."

Visteon's Ypsilanti plant was shut down between Christmas and New Year's Day. On the first day of work after the holiday, Canada received a disciplinary action report from Labor Relations Representative Roy Smith. He was sent home without pay for the rest of his shift.⁵

Analysis

The General Counsel alleges that the Union violated Section 8(b)(1)(A) and 8(b)(2) by requesting that Visteon discipline Ali Canada on about December 21, 2000. The Union

⁵ Canada, who worked the second shift, testified that on December 20, 2000, he came to work during the first shift to have the labor relations department put a message on a video monitor. He testified that he went into the training room to watch the new hires' training video while waiting for the labor relations representatives to return from lunch. He further testified that he had some fliers, including a registration form for the "Black Men in Unions Institute" and applications for a joint Ford-UAW tuition plan with him and passed some of these fliers out to new employees watching the video. Canada also testified that in the meeting in which Roy Smith disciplined him, Smith and/or Thomas Jones told him that the union leadership had a problem with his handing out material.

I do not credit Canada's testimony that anything was said about his handing out flyers or other material on January 4, 2001, when he was disciplined by Visteon. His testimony in this regard is internally inconsistent. I find that Thomas Jones was not at this meeting. Finally, even assuming that Canada was engaged in protected activity by handing out flyers in the training room, there is no evidence that Pauline Castro or any union or management official knew that Canada was doing so.

contends it never asked Visteon to discipline the Charging Party. However, when it filed the grievance with Visteon, it understood that disciplinary measures were possible and indeed likely, if Visteon concluded that the grievance had merit. Therefore, if the decision to file the grievance was related to Canada's protected activities, I would find a violation as alleged.

The test of whether the Union's filing of the grievance violated Section 8(b)(1)(A) and Section 8(b)(2) is whether it reasonably tended to coerce Ali Canada in the exercise of his Section 7 rights, *Boilermakers Local 686*, 267 NLRB 1056, 1057 (1983); *Letter Carriers Branch # 47*, 330 NLRB No. 109 (slip opinion page 1, note 1) (2000). The test for a violation of these provisions does not generally depend upon an examination of the respondent's motivation, *ibid.* However, in the instant case, where the grievance is not on its face related to the charging party's protected activities, motivation is somewhat relevant in determining whether there is any relationship between the Union's actions and the charging party's protected dissident activities. If there is no such relationship I cannot find that the filing of the grievance tended to coerce Ali Canada in the exercise of his Section 7 rights.

Although Canada testified that he believes that the grievances were filed at least in part to discourage his dissident activities, I find that has not been established and that the General Counsel has therefore not met its burden of establishing a violation. At face value, Pauline Castro's response to her interaction with Ali Canada appears to be disproportionate with his behavior. This is also true with regard to the Union's characterization of his behavior as "stalking". However, I am unable to conclude that the Union's stated objective in filing the grievances, i.e., to require Visteon to enforce its zero tolerance policy on harassment, was a pretext to silence a union dissident.

It is unclear whether Pauline Castro was aware of Ali Canada's prior threats against union officials and perhaps others. However, Union Committeeman Campbell and Plant Chairman Fosket were aware of previous threats. Moreover, Ali Canada has a demeanor that could be subjectively deemed intimidating. Given this background, I conclude that the Union filed grievances on behalf on Castro to insulate her from Canada, rather than to dissuade him from engaging in dissident activities. Thus, I find that the General Counsel has not established statutory violations with regard to either the grievance filed in December 2000 or the grievance filed in October regarding Canada's remark about Castro's finger.⁶

Conclusions of Law

1. Respondent, UAW Local 849, violated Section 8(b)(1)(A) in asking Visteon Corporation to prevent Ali Canada from posting and/or distributing his dissident union flyer regarding payment for the cell phones of union officials on September 30, 2000.

2. The Union did not violate the Act in filing grievances with Visteon regarding remarks by the Charging Party to Pauline Castro on October 19, and December 20, 2000.

ORDER

The Respondent, Local 849, International Union United Automobile, Aerospace and Agricultural Implement Workers (UAW), AFL-CIO, if officers, agents and representatives shall

⁶ The Complaint does not allege a violation with regard to the October 19, incident. Arguably, a violation was fully litigated by the parties.

1.Cease and desist from:

(a) Requesting that Visteon Corporation prevent the Charging Party from posting and/or distributing flyers containing dissident union messages;

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to the effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office at Visteon Corporation's Ypsilanti, Michigan facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to bargaining unit members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Visteon has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former bargaining unit members employed by Visteon at any time since September 30, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 2, 2001.

Arthur J. Amchan
Administrative Law Judge

⁷ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request that Visteon Corporation prevent you from posting and/or distributing flyers containing dissident union messages.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LOCAL 849, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, AFL-CIO

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313-226-3244.